

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

DAVID T. & LELAND J. BARCHANOWICZ,)
Plaintiffs,)
v.)
FREIGHTLINER TRUCKS OF DOTHAN,)
INC.; DAIMLERCHRYSLER SERVICES)
NORTH AMERICA LLC; COMMERCIAL)
RECOVERY SYSTEMS, INC.; and Fictitious)
Party Defendants "A" through "U,")
Defendants.)

CIVIL ACTION NO.
1:05cv1232-MHT

PLAINTIFFS' MOTION TO AMEND SCHEDULING ORDER

COME NOW, Plaintiffs David and Leland Barchanowicz (“Plaintiffs”), by and through the undersigned counsel and hereby respectfully move this Honorable Court to enter an Amended Scheduling Order in this matter. As grounds in support thereof, Plaintiffs set forth the following.

1. The above-captioned litigation arose from state court litigation that was removed to this Court on December 28, 2005. (Ct. Doc. 1).
2. A Scheduling Order was entered on January 31, 2006, setting trial for January 8, 2007. (Ct. Doc. 11 at 2). The Court also ordered a discovery cutoff date of November 17, 2006. (Id. at 3).
3. On May 1, 2006, Defendant DFS moved to compel arbitration. (Ct. Doc. 22).¹ Soon thereafter, in June 2006, the parties jointly moved and were ordered to mediate the case through the Federal Magistrate Judge. (Ct. Docs. 26 & 27).
4. Plaintiffs served requests for production of documents on

¹ Plaintiffs have filed an Opposition to Defendant DFS's Motion to Compel Arbitration. (Ct. Doc. 30).

Defendants on May 19, 2006. DFS objected to Plaintiffs' requests for production on June 15, 2006, and to date, Plaintiffs have not received any documents from Defendants in this matter.² Plaintiffs have not received any documents or written responses to their request for production from Defendant Commercial Recovery Systems, Inc. ("CRS").

5. In August 2006, the parties unsuccessfully conducted mediation which would have mooted both Defendant DFS's Motion to Compel Arbitration and the parties' discovery disputes. Additionally, a successful mediation would have negated the need for depositions in the case. To date, no depositions have been scheduled or taken in this matter.

6. Because of these delays relating to all facets of trial preparation , the parties have not been able to progress with discovery as originally planned, and will not be able to complete discovery by November 17, 2006.

7. Accordingly, Plaintiffs respectfully request that this Honorable Court continue the pretrial deadlines set forth in sections one (1) through sixteen (16) of the January 31, 2006, Scheduling Order.

CONCLUSION

WHEREFORE, premises considered, Plaintiffs respectfully request that this Honorable Court continue the pretrial deadlines set forth in the January 31, 2006, Scheduling Order and enter an amended scheduling order.

² Plaintiffs are contemporaneously filing a Motion to Compel Production of Documents.

Respectfully Submitted,

/s/ Anil A. Mujumdar

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CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following to all counsel of record.

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